

1. My name is Michael S. Crow. I am a Vice President at SWCA Environmental Consultants, Inc. (“SWCA”). I have served in this position since October 2017, and have worked for SWCA since August 2006 as an Environmental Specialist and as a Cultural Resources Program Director. For two years before I came to SWCA, I worked as an Environmental Specialist with the LFC, Inc. and the Texas Department of Transportation (“TxDOT”) to prepare environmental studies in advance of various construction projects. These studies included a review of endangered species habitat, potential archaeological impacts, and preparation of National Environmental Policy Act documents for the projects. I have significant experience performing natural and cultural resources surveys for large infrastructure projects, including the Texas Express Pipeline, the Seaway Loop

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Pipeline, and the Sand Hills Pipeline. I have also served as the project manager for the Gulf Coast Express pipeline, and am serving in that role for the Permian Highway Pipeline project (the “Pipeline”).

2. I have scientific and personal knowledge of the facts set forth in this declaration, and they are true and correct. As to my scientific training and background, I obtained my B.A. in Anthropology from Texas A&M University in 2000 and completed my M.A. in Archaeology at Texas A&M University in 2004 with a certificate in Historic Preservation. In addition to my cultural resources background, I have received training and attended courses related to protected species biology, Endangered Species Act consultation, wetland delineation, and wetland installation, creation, and reconstruction. *See Attachment B-1.*

3. SWCA, under my supervision, conducted a range of environmental analyses and surveys related to the Pipeline in advance of construction. SWCA drafted and submitted the Preconstruction Notifications (“PCNs”) for the Pipeline to the Fort Worth and Galveston Districts of the United States Army Corps of Engineers (“Corps”). We prepared the Wetland Delineation Reports for the Project and submitted those Reports to the Albuquerque, Fort Worth, and Galveston Districts of the Corps; those Reports involved a review of numerous wetlands and waterbody databases and field surveys. My team gathered the relevant scientific information and prepared for the Corps’ consideration a draft of the Biological Assessment regarding the Permian Highway Pipeline LLC (“PHP”) Pipeline project. SWCA extensively reviewed the Pipeline and its project area as well as the construction methods PHP would be using along the Pipeline generally and in the vicinity of the federally listed species. SWCA personnel reviewed numerous scientific studies related to the biology, ecology, habitat, distribution, and abundance of the federally listed species. SWCA personnel also conducted numerous field studies, described in additional detail below, for the federally listed species. SWCA has continued to support construction of the Pipeline by providing biological

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monitors to document existing oak wilt infections that pre-dated PHP's construction activities, ensuring the application of oak wilt preventative measures consistent with the Biological Opinion as amended by the May 4, 2020 Addendum, monitoring for Golden-cheeked warblers, and monitoring and overseeing the maintenance of erosion control devices.

4. PHP has asked me to provide this declaration in the above-captioned litigation. I have reviewed the Plaintiff's Motion for a Preliminary Injunction and the declarations of Dr. Thomas David Hayes, Heath Frantzen, Susan Gates, Jenny Blair, John Watson, Lynn Gallimore, and Belinda Kay Pence. The purpose of this Declaration is to provide factual background regarding the Pipeline, respond to the alleged environmental harms discussed in the preliminary injunction motion and attached declarations, and describe PHP's compliance with the requirements of Biological Opinion, as amended, and all other applicable construction requirements of federal and state law.

**Construction Status at Declarant Properties**

5. Of the persons who have submitted Declarations in support of Plaintiff's Motion for a Preliminary Injunction, only Mr. Frantzen has property that is crossed by the Pipeline. Mr. Frantzen owns acreage in Gillespie County, outside of Fredericksburg. Mr. Frantzen is the only declarant with a Corps Action Area on his property. *See Attachment B-2*. Potential warbler habitat that existed in the right-of-way on Mr. Frantzen's property has been cleared and the water crossing subject to Corps jurisdiction has been completed. The Pipeline has been installed, the trench backfilled, and the surface reseeded.

6. The Pipeline route does not cross Ms. Gates' land in Driftwood, Hays County. Ms. Gates' property is a couple of miles away from the Pipeline and over four miles away from the nearest Corps Action Area. She lives in a subdivision that is across a road from the Pipeline route. In the area outside Ms. Gates' subdivision, the Pipeline route has been cleared and graded. Ms. Gates does not live near a water crossing nor does she express an interest or concern about a water crossing. Ms.

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Gates' subdivision has a single point of egress and Ms. Gates is concerned about being hindered from leaving in the event of a pipeline accident, but those concerns also apply to any event or disaster, including wildfires, flash floods, etc. *See Attachment B-3.*

7. The Pipeline route does not cross Mr. Watson's property in Johnson City, Blanco County. Mr. Watson resides over 35 miles from the location where PHP is crossing underneath the Pedernales River using horizontal directional drilling ("HDD").

8. The Pipeline Route does not cross Ms. Gallimore's property in Hays County. Ms. Gallimore operates the Sinya Retreat located on Lone Man Creek, but the Pipeline does not cross Lone Man Creek near Ms. Gallimore's property. Rather, the Corps Action Area nearest to Ms. Gallimore's property is over two miles away. *See Attachment B-4.* PHP crossed Lone Man Creek on June 27, 2020 using a dry-cut trench method. The crossing was completed in a single day, without any of the dire effects Ms. Gallimore claimed would occur.

9. The Pipeline route does not cross Ms. Pence's property in Fredericksburg in Gillespie County, nor is Ms. Pence located near a jurisdictional crossing, nor does she claim an interest in one. The property near Ms. Pence over which she expresses concern has been cleared and graded, and pipe was strung in late June.

10. Plaintiff and Declarants refer to the additional loss of potential Golden-cheeked warbler habitat if construction is not enjoined. PHP has cleared nearly all potential warbler habitat within the project area except for the area where the Pipeline is being re-routed to avoid having to cross the Blanco River, and in three other small areas; one in Gillespie County and two just west of Kyle, Texas. PHP delayed clearing the areas in Gillespie County and nearby Kyle to accommodate landowner requests that were not known when the route was finalized and submitted to the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service. None of the Declarants in this litigation

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live near those areas or claim use of those areas. PHP anticipates that it will complete clearing those areas when the warbler breeding/nesting season is finished.

**Construction Methods and Species Protection**

11. PHP has ensured that its contractors use preferable construction methods, best management practices (“BMPs”) and erosion control devices such as silt fencing, matting, and hay bales. These methods are implemented to avoid and minimize soil erosion and sedimentation in adjacent wetlands and waterbody areas. All construction activities are taking place in accordance with all NWP General Conditions and the Corps’ Regional Conditions for the State of Texas. NWP General Conditions and TCEQ Water Quality Certification Conditions require PHP maintain normal water flows, PHP deploy appropriate sedimentation and erosion controls, and PHP comply with a number of other conditions protective of waterbodies, migratory birds, and aquatic life. As described in the following, PHP has also adopted a number of additional construction techniques and BMPs to protect the ecologically sensitive features PHP may encounter along the Pipeline route. As construction is completed along the five spreads, PHP is restoring the landscape to its preconstruction contours and reseeded the right-of-way with grasses native to the region (unless a landowner requests a different kind of restoration seeding).

12. PHP has applied conservation measures where appropriate given endangered species’ distribution along the Pipeline. PHP has applied these conservation measures irrespective of Corps jurisdiction (i.e., the same measures and conservation efforts have been applied to both uplands and Corps jurisdictional areas). PHP is observing a number of spill prevention and response practices, including regular equipment inspections for leaks, provision of spill kits to contractors, and prohibition of refueling or maintenance activities within 100 feet of waterbodies or Corps Action Areas when possible. When stationary equipment located within 100 feet of waterbodies requires refueling, PHP is ensuring that an inspector is onsite to observe the refueling and that spill kits are present.

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Environmental training has been provided to all field personnel for spill prevention and response purposes.

13. For all federally listed species, PHP has provided environmental awareness training to field personnel to ensure that personnel working near potential habitat of federally listed species are trained in all applicable conservation measures, including basic identification of Houston toad and warbler individuals and their habitats. These topics were covered in preconstruction meetings with contractors.

14. I am aware of allegations made by Jenny Blair of Blair Wildlife Consulting that an apparent golden-cheeked warbler nest was discovered along the right-of-way. Those allegations were originally made in early May 2020 and, in response to the nest photograph submitted to federal officials, PHP sent representatives out to the site of the alleged discovery. Those representatives were unable to locate a nest, and Blair or her assistants may have taken that nest from the specific location. SWCA's endangered species specialists reviewed those photographs and were unable to conclude that the nest was in fact a golden-cheeked warbler nest. The specialists observed that the nest's features, including its size and the absence of grasses and spiderwebs from the nest, indicate that it might be the nest of another bird, not a golden-cheeked warbler.

15. PHP has implemented the Biological Opinion's requirements regarding the endangered Houston toad, which feature a variety of conservations measures including regular right-of-way inspections, exclusion fencing, and seasonal restrictions on clearing and maintenance activities. Mr. Watson's fears about the Pipeline adversely affecting Houston toad communities near his property in Bastrop County are misplaced. The Pipeline does not pass through Bastrop County. The only areas where it does affect potential habitat for the Houston toad is along Spread 5 in Colorado and Lavaca counties. Clearing and grading is complete along Spread 5, and the Pipeline is approximately 60% done there.

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16. PHP has also implemented the Biological Opinion's requirements for the threatened Tobusch fishhook cactus found in Kimble County. Route surveys identified numerous individuals within the Pipeline route and the Biological Opinion recommended that these individuals be salvaged and translocated to San Angelo State University for preservation and research. That task has been accomplished. None of the declarants describe a particular interest in this threatened species at any location along the right-of-way. Clearing and grading been completed in this Spread, and ditching, welding, and backfilling activities are all over 70% complete.

**Route Modifications and Remaining Crossings**

17. PHP made microadjustments to the Pipeline route to accommodate landowners' plans for future developments that were unknown at the time of the original routing decisions. The Corps reinitiated consultation with the Service for these route microadjustments and the Service issued an addendum to the Biological Opinion on May 4, 2020.

18. PHP has determined that crossing the Blanco River using both conventional methods and HDD would be infeasible due to previously unknowable geological conditions. PHP is acquiring additional lands and intends to route the Pipeline around the Blanco River; PHP has submitted relevant documentation to the Corps to support a reinitiation of consultation.

19. As of the date of this Declaration, PHP has completed a substantial number of water crossings. PHP has trenched 76 percent of the waterbody crossings.

20. On June 22, 2020, the Navigable Waters Protection Rule went into effect, which categorically excludes ephemeral streams from the scope of "waters of the United States"—a key statutory phrase that determines the jurisdictional breadth of the Clean Water Act. PHP is in discussion with the Corps and the Service about the impact of the Navigable Waters Protection Rule on the Pipeline generally and these route adjustments specifically. If the Navigable Waters Protection

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Rule were applied to the project, many of the stream crossings that remain untrenched would no longer be regulated by the Corps.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct. Executed July 10, 2020.

A handwritten signature in black ink, appearing to read "Michael S. Crow", is written over a horizontal line.

Michael S. Crow  
Vice President  
SWCA Environmental Consultants



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*ATTACHMENT B-1*

*CURRICULUM VITAE OF MICHAEL S. CROW*



Resume

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## MICHAEL S. CROW, M.A., RPA, VICE PRESIDENT, GULF COAST OPERATIONS

Mr. Crow serves as Vice President of SWCA's Houston and Baton Rouge offices, providing environmental compliance services to clients throughout Texas and the Gulf Coast region. His 17 years of experience include projects across Texas, Oklahoma, Louisiana, and Mississippi, and encompass a wide range of services, including overall program and project management, federal and state regulatory compliance, field direction of survey and excavation crews, report preparation and writing, and proposal and bid preparation.

Mr. Crow has managed an array of projects ranging from small-scale transportation, land development, and flood control projects to large-scale linear projects. Mr. Crow has particular expertise in the management and timely execution of large capital projects.

### YEARS OF EXPERIENCE

17

### EXPERTISE

Regulatory compliance and permitting  
Cultural resources assessments and archaeological surveys

Wetland delineations and determinations

### EDUCATION

M.A., Anthropology; Texas A&M University; 2004

B.A., Anthropology; Texas A&M University; 2000

### REGISTRATIONS / CERTIFICATIONS

Registered Prof. Archaeologist No. National; 2004

### TRAINING

Historic Preservation Certificate, Texas A&M University; 2004

Project Management Bootcamp, PSMJ Resources, Inc.; 2006

Basic Wetland Delineation; 2006

TxDOT Biological Resource Training; 2004

Section 7: Endangered Species Act, Interagency Cooperation; 2004

Wetland Installation, Creation, and Reconstruction; 2004

### SELECTED PROJECT EXPERIENCE

**Permian Highway Pipeline; Multiple Counties, Texas; Permian Highway Pipeline LLC.** Mr. Crow is currently serving as the project manager for a proposed 428-mile natural gas pipeline extending across Texas from the near Waha to near Columbus. He has managed the day-to-day execution of the project, as well as coordination with three U.S. Army Corps of Engineer Districts, the U.S. Fish and Wildlife Service, and Texas Historical Commission. *Role: Project Manager.*

**Gulf Coast Express Pipeline; Multiple Counties, Texas; Gulf Coast Express LLC.** Mr. Crow served as the project manager for a roughly 500-mile-long natural gas pipeline extending across Texas from near Waha to near Agua Dulce. He oversaw the day-to-day execution of the project, as well as coordination with three U.S. Army Corps of Engineer Districts, the U.S. Fish and Wildlife Service, and Texas Historical Commission. *Role: Project Manager.*

**Sand Hills Pipeline Phase I; Multiple Counties, Texas; DCP Operating Company, LP.** *Role: Cultural Resources Director.* Mr. Crow oversaw the completion of an intensive archaeological survey of portions of an approximately 800-mile long pipeline extending from Mont Belvieu near Houston, through the Eagleford Shale south of San Antonio, skirting the western edge of the Edward's Plateau, and finally terminating in the Permian gas fields near Odessa. *Role: CR Director/Principal Investigator.*

**Seaway Loop Pipeline; Enterprise Products Operating, LLC; Oklahoma and Texas.** SWCA conducted an intensive natural and cultural resources survey of the Seaway Loop Pipeline project in multiple Texas and Oklahoma counties. Mr. Crow oversaw the completion of an intensive archaeological survey of portions of Segment 1-4 (525 miles) extending from Cushing, Oklahoma to Jones Creek in Brazoria County, Texas. *Role: Cultural Resources Director.*

**Texas Express Pipeline; Multiple Counties, Texas, Texas; Texas Express Pipeline, LLC.** SWCA conducted natural and cultural resources surveys in support of Section 404 CWA and Section 10 RHA authorizations associated with three USACE Districts via NWP 12. Additionally, SWCA obtained numerous state permit authorizations and provided up to 15 Environmental Inspectors over the course of construction to assist in maintaining environmental compliance. *Role: CR Director/Principal Investigator.*

**Exhibit B-2 to Opposition to Motion for Preliminary Injunction**

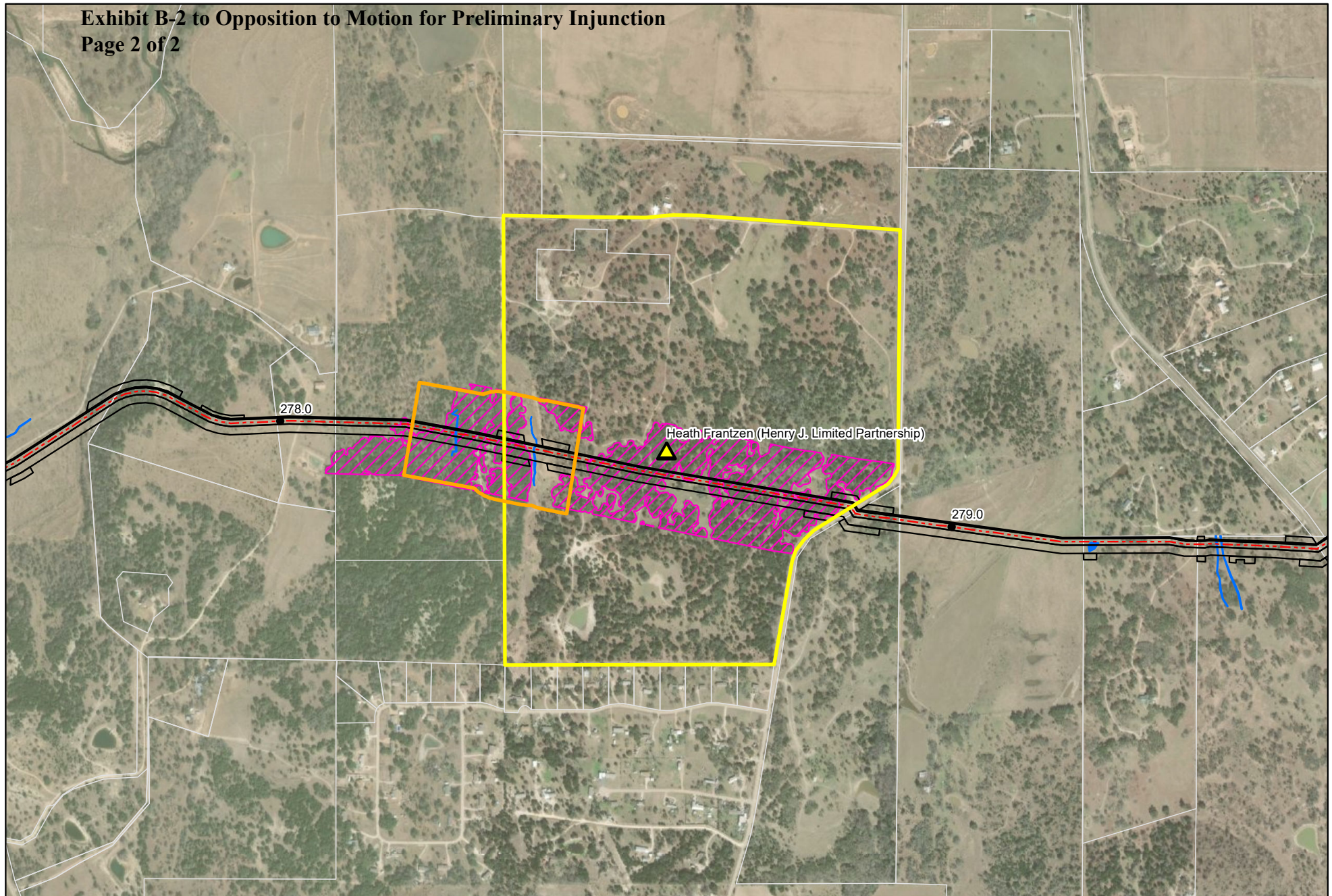
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*ATTACHMENT B-2*

*MAP OF CORPS ACTION AREA CLOSEST TO HEATH FRANTZEN*



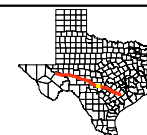
**Exhibit B-2 to Opposition to Motion for Preliminary Injunction**  
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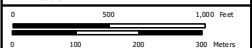
**SWCA**  
 ENVIRONMENTAL CONSULTANTS

**PERMIAN HIGHWAY PIPELINE**  
**HEATH FRANTZEN (HENRY J. LIMITED PARTNERSHIP)**  
 520 HJ RANCH ROAD  
 FREDERICKSBURG, TX 78624

- |                        |                     |                          |
|------------------------|---------------------|--------------------------|
| --- Project Centerline | ▲ Parcel Locations  | ■ Surveyed Waterbody     |
| □ Project Workspace    | ■ USACE Action Area | ▨ GCWA Potential Habitat |
| ● Project Milepost     | ■ Property Boundary | □ Parcel Boundary        |



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**Exhibit B-3 to Opposition to Motion for Preliminary Injunction**

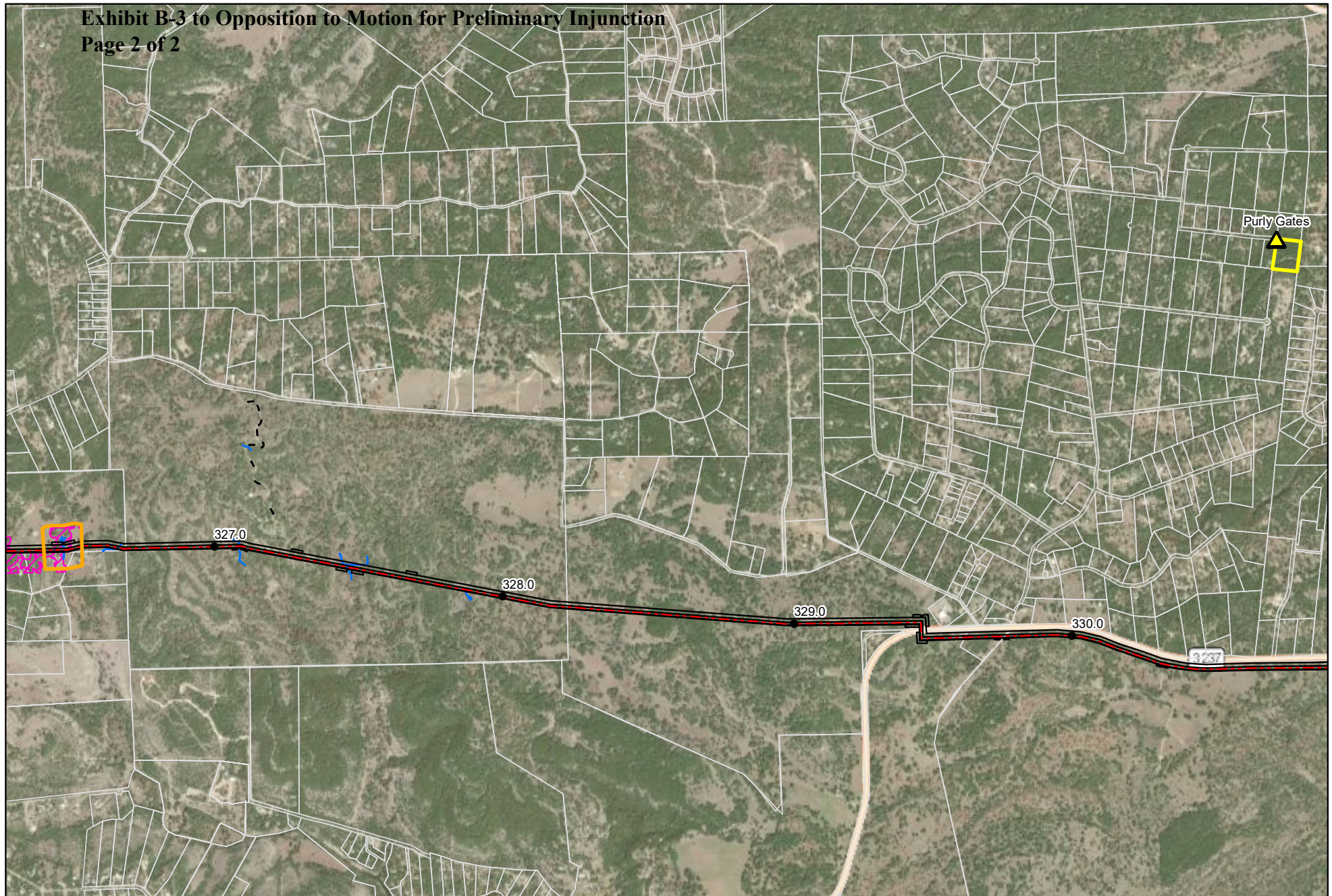
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*ATTACHMENT B-3*

*MAP OF CORPS ACTION AREA CLOSEST TO PURLY GATES*



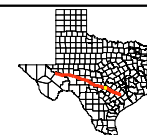
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**SWCA**  
 ENVIRONMENTAL CONSULTANTS

**PERMIAN HIGHWAY PIPELINE**  
 PURLY GATES  
 598 LAME HOSS LN  
 DRIFTWOOD, TX 78619

- |                        |                     |                          |
|------------------------|---------------------|--------------------------|
| --- Project Centerline | ▲ Parcel Locations  | ■ Surveyed Waterbody     |
| □ Project Workspace    | ■ USACE Action Area | ▨ GCWA Potential Habitat |
| ● Project Milepost     | □ Property Boundary | □ Parcel Boundary        |



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 0 340 480 720 Meters

**Exhibit B-4 to Opposition to Motion for Preliminary Injunction**

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*ATTACHMENT B-4*

*MAP OF CORPS ACTION AREA CLOSEST TO LYNN GALLIMORE*



